IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 12TH JULY 2007 / 21ST ASHADHA 1929

CRP.No. 2829 of 2001(G)

AGAINST THE ORDERS DATED 14/06/2001 IN EA.1245 /1999 IN EA.120/99 AND E.A.NO.569/01 IN EA.1245/99 IN EP.269/97 IN OS.1436/1991 of II ADDL.SUB COURT,THRISSUR

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REVN. PETITIONER:

K.V.RAJAN, S/O.LATE K.R.VARGHESE,
KANJIRATHINGAL HOUSE, OLARIKARA DESOM,
PULLAZHI VILLAGE, THRISSUR.

BY ADV. SRI.DILIP J. AKKARA

RESPONDENTS:

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1. RADHAMMAL, W/O.LATE SUBHAMMA SASTHRI,
   ESWARA PATTAR GRAMAM, KAVASSERY AMSOM,
   ALATHUR TALUK.

2. PARAMESWARAN SASTHRIKAL, S/O.SUBHAMMA SASTHRI,
   KAVASSERY AMSOM, ALATHUR TALUK.

3. P.J.CICILY, W/O.LATE K.R.VARGHESE,
   KANJIRATHINGAL HOUSE, OLARIKKARA DESOM,
   PULLAZHI VILLAGE, THRISSUR.

4. MEENA JOHNSON, D/O.LATE K.R.VARGHESE,
   KANJIRATHINGAL HOUSE, OLARIKKARA DESOM,
   PULLAZHI VILLAGE.

5. JEENA VARGHESE,D/O.LATE K.R.VARGHESE,
   KANJIRATHINGAL HOUSE, OLARIKKARA DESOM,
   PULLAZHI VILLAGE.

6. LITTY VARGHESE, D/O.LATE K.R.VARGHESE,
KANJIRATHINGAL HOUSE, OLARIKKARA DESOM,
PULLAZHI VILLAGE.

R1 & R2 BY ADV. SRI.P.VIJAYA BHANU
SMT.ROHINI V.MENON
R4 TO R6 BY ADV.SRI.B.K.PURUSHOTHAMAN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 12/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CMP.5967/01 IN C.R.P.2829/01

CLOSED

12.7.2007 SD/-PIUS C.KURIAKOSE, JUDGE

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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C.R.P.No.2829 OF 2001

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DATED THIS THE 12th JULY, 2007

O R D E R

I do not find any jurisdictional infirmity about the orders which are impugned in this C.R.P. The orders impugned are those passed by the execution court in E.A.No.569 of 2001 and E.A.No.1245 of 1999. E.A.No.1245 of 1999 was an application for review of an earlier order passed by the court in E.A.No.120 of 1999, and E.A.No.569 of 2001 was an application for effecting consequential amendments to the pending applications so as to implead the legal representatives of the original judgment-debtor who in the meanwhile had passed away.

2. As directed by me, the learned counsel for the petitioner made available for my perusal, copies of E.A.120 of 1999 and the order therein. The prayer in that E.A. was to restore E.A.1844 of 1998, an application filed by the original judgment-debtor for setting aside the sale of the properties.

3. Heard Sri.Dilip J.Akkara, counsel for the petitioner and Sri.P.Vijaya Bhanu, counsel for the respondents 1 and 2.

4. Mr.Dilip J. Akkara would submit that the order passed by the learned Sub Judge in E.A.120 of 1999 is the result of a mistake on the part of the court. The party may not be penalised for the above

mistake, counsel appeals. A reading of the order in E.A.120 of 1999 will show that the court was of the opinion that E.A.1844 of 1998 was just an application for sale adjournment so as to enable the judgment-debtor to pay off the decree-debt. The learned counsel submits that the E.A. was for setting aside the sale and not for adjournment of sale. Even though the learned counsel was not able to inform me of the number of the other sale adjournment application which also stood posted along with the E.A. on the day the court dismissed E.A.1844 of 1998, it cannot be said that there is absolutely no merit in the submission of the learned counsel that the court has construed E.A.1844 of 1998 while passing orders in E.A.120 of 1999 as an application for adjournment of sale rejecting which the sale was conducted. E.A.1844 of 1998 was actually for setting aside the sale which had already been conducted on 5.11.1998. Counsel would further submit that at any rate, there was no justification for dismissing E.A.No.569 of 2001 which was necessitated in view of the decree-holders' action in impleading the legal representatives of the deceased original judgment-debtor. The above submission of the learned counsel cannot be stated to be totally without merit.

5. Per contra, Sri.P.Vijaya Bhanu would submit that at every

stage of the execution proceedings the predecessor of the petitioner as well as the present petitioner had not been leaving any stone unturned for protracting the execution proceedings. Respondents 1 and 2 became obliged to purchase the property because there was no other method for securing the fruits of a decree which had been obtained by them after a toughly fought legal battle.

6. Mr.Akkara by way of reply would submit that the property which has been now purchased by the decree-holders is very valuable, being situated at Olarikara centre. A portion of the property, if sold in the open market, will be sufficient for discharging whatever amounts are due to the decree-holders by way of decree-debt and other expenses incurred by them in the matter of purchasing the property.

7. I have considered the rival submissions. The property was purchased by the decree-holders-respondents 1 and 2 for Rs.1,92,620/-. Having regard to the submissions addressed before me, I am of the view that considerations of justice demand that the petitioner is given one more opportunity to pay off the decree-debt and the amounts expended by the decree-holders towards the sale so that he can salvage the property which according to him is very valuable.

8. Under these circumstances, invoking the supervisory jurisdiction of this Court under Article 227 of the Constitution, I set aside the impugned orders and the order dated 17.8.1999 in E.A.120 of 1999 and allow restoration of E.A.1844 of 1998 but subject to the condition that the petitioner shall deposit a sum of Rs.1,92,620/- before the court below within four months from today. If payment is made as above, E.A.1844 of 1998 will stand restored. If deposit is made and E.A.No.1844 of 1998 becomes restored, the court below will take up that E.A. and dispose of the same in accordance with law. The order of stay presently passed will continue for a period of four months from today. Further continuance of the stay order will be subject to the orders to be passed by the court in E.A.1844 of 1998. If deposit is not made within the time stipulated above, the C.R.P. will stand dismissed and the impugned orders as well as the order in E.A.120 of 1999 will stand confirmed.

The C.R.P. is disposed of as above. No costs.

(PIUS C.KURIAKOSE, JUDGE)

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